



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 30, 1995

Mr. Richard D. Monroe
Deputy General Counsel
Texas Department of Transportation
Dewitt C. Greer State Highway Bldg.
125 East 11th Street
Austin, Texas 78701-2483

OR95-030

Dear Mr. Monroe:

You have asked whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 30365.

The Texas Department of Transportation (the "department") received a request for (1) the number of individuals hired by the department's Corpus Christi office within the last two years, (2) the job posting requirements for each job, and (3) winning candidates' application forms. You have informed this office that all of the information requested was provided except for certain information redacted from the application forms.¹ You indicate that you have withheld each applicant's name, address, telephone number, and social security number. You contend that the redacted information is excepted from disclosure pursuant to section 552.103(a) of the Government Code. To show the applicability of section 552.103(a), a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4.

The information supplied shows that the requestor has filed a complaint with the Equal Employment Opportunity Commission ("EEOC") against the department, alleging discrimination on the basis of sex, national origin, and age. That complaint is pending.

¹You submitted the job descriptions to this office. We assume that the only information at issue are the job applications rather than the job descriptions.

This office has stated that a pending EEOC complaint indicates litigation is reasonably anticipated and therefore meets the first prong of the section 552.103(a) test. Open Records Decision Nos. 386 (1983) at 2; 336 (1982) at 1. You also submitted sample copies of the employment application forms to this office.² Our review of the application forms indicates that the forms are related to the subject of the litigation. The department has therefore met both prongs of the section 552.103(a) test.

Because you have made the requisite showing that litigation is reasonably anticipated and that the application forms relate to that anticipated litigation, you may withhold from disclosure the redacted information on the forms under section 552.103(a).³ We note also that although the section 552.103(a) exception is discretionary with the governmental body, some of the information on the forms may be confidential and therefore must not be released. There are criminal penalties for releasing confidential information. Gov't Code § 552.352.

The application forms at issue contain the home addresses and home telephone numbers of current or former departmental employees. Sections 552.117 and 552.024 of the Government Code protect from public access the home addresses and home telephone numbers of current or former governmental employees who have chosen to keep this information private. Section 552.024 provides that employees who do not want home addresses and home telephone numbers to be publicly accessible must take that option within fourteen days after starting or ending employment with the state. After fourteen days, an employee wanting to open or close access must so request in writing. If an election is not made, the information is subject to public access. You must withhold the home addresses and home telephone numbers of those employees who, as of the time of the request for the information, had elected to keep the information private. Open Records Decision Nos. 530 (1989) at 5; 482 at 4; 455 (1987).

The forms also disclose applicants' social security numbers. This office concluded in Open Records Decision No. 622 (1994) at 3, that amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(c)(vii), make confidential social security numbers obtained or maintained pursuant to any provision of law enacted on or after October 1, 1990. If these applicants' social security numbers were so obtained or maintained, the information is confidential and may not be disclosed.

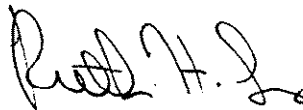
²In determining that information on the application forms may be withheld from disclosure, we assume that the representative samples of information you supplied to this office are truly representative of the requested records as a whole. See Open Records Decision Nos. 499, 497 (1988) (where requested documents are numerous and repetitive, governmental body can submit representative sample; but if each record contains substantially different information, all must be submitted.) This decision does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than what was submitted to this office.

³ Since the entire form appears to be related to the litigation, the entire form could have been withheld from disclosure. It was within the department's discretion to release any of the non-confidential information on the form.

You may withhold from disclosure pursuant to section 552.103(a) information on the application forms. You must withhold from disclosure information on the forms that is confidential. We note that the applicability of section 552.103(a) ends if the other party to the anticipated litigation obtains the information or when the litigation is concluded. Attorney General Opinion MW-575 (1982) at 2; Open Records Decision Nos. 350, at 3, 349, at 2 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Government Section

RHS/KHG/rho

Ref.: ID# 30365

Enclosures: Submitted documents

cc: Mr. William P. Maher
518 Bowie Drive
Corpus Christi, Texas 78415
(w/o enclosures)

Ms. Tina Coronado
Assistant Attorney General
Transportation Division
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548
(w/o enclosures)